IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

AS.No. 766 of 1999(B)

OS.147/1998 of II ADDL.SUB COURT,KOZHIKODE
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APPELLANT/PLAINTIFF:

P.V. SADANANDA KURUP,
S/O. KUNHICHATHU KURUP,
"SAYISREE", KOHINOOR,
THENHIPALAM AMSOM DESOM,
MALAPPURAM DISTRICT.

BY ADVS. SRI.P.V.MADHAVAN NAMBIAR
SRI.GOVIND K.BHARATHAN
SRI.C.P.KUNJHIKANNAN
SRI.N.N.SASI

RESPONDENT/DEFENDANT:

K. KALLIANIKUTTY, D/O. NARAYANA MENON,
KOZHIKODE PROVIDENCE WOMENS COLLEGE
OFFICE STAFF, MALAPARAMBA,
CHEVAYUR AMSOM DESOM, KOZHIKODE TALUK.

BY ADVS. SRI.K.P.BALASUBRAMANYAN
SRI.S.NIRMAL

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD
ON 13/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

A.S. NO. 766 OF 1999

Dated this the 13th day of December, 2007

JUDGMENT

Harun-Ul-Rashid, J.

The plaintiff in O.S. No.147 of 1998 on the file of the II Additional Sub Court, Kozhikode is the appellant. The suit was filed for mandatory injunction and recovery of possession of the plaint schedule building. The court below found that the plaintiff was not entitled to any of the reliefs claimed in the plaint and dismissed the suit.

2. The parties herein are referred to as the plaintiff and defendant as in the suit. As per the averments in the plaint, the plaint schedule building belongs to the plaintiff and the defendant is a resident therein. According to the plaintiff, he had entered into an agreement with the defendant by which he agreed to sell the property to the defendant for a total consideration of Rs.4,00,000/-. Accordingly, Ext.A1 agreement was executed on 29.5.1993. It was further averred in the plaint that on the basis of the agreement, the plaintiff received from the defendant an amount of Rs.10,000/- as advance and the balance amount was to be paid within 11 months. It was pleaded by the plaintiff that the building was put in the possession of the defendant who agreed to pay Rs.850/- per month

by way of mesne profits. The plaintiff further alleged that the defendant informed him that she was not in a position to purchase the property and requested him to allow her to reside in the building for a further period of one year as licensee .

3. The defendant field a written statement denying the allegations in the plaint and inter alia contended that no agreement was signed between the parties and that the arrangement agreed between the parties was only a lease arrangement. She further contended that there was no contract to purchase the property and that the building in which she was residing was rented out to her for a period of five years on a monthly rent of Rs.850/- and on deposit of Rs.10,000/-. The defendant also denied the averment that she was residing in the building as a licensee with limited rights. According to her, her possession is legal and she can be evicted only under the provisions of the Rent Control Act. In support of his case, the plaintiff and another witness were examined as Pws.1 and 2 and Exts.A1 to A3 were marked. The defendant was examined as DW.1 and Exts.B1 to B7 were marked on her side.

4. The court below after appreciating the evidence in detail, noted in paragraph of 11 of the judgment that at the time of argument, learned

counsel for the plaintiff had submitted that the contention that the defendant is a licensee was not pressed. The court below rightly held that the preponderance of probability also suggested that the arrangement was a lease, that Ext.A1 was not an agreement for sale and that Rs.10,000/- was paid by the defendant only by way of deposit which is the usual practice for letting out buildings. Ultimately, the court below in paragraph 13 of the judgment, came to the conclusion that the defendant was only a lessee of the building and not a licensee, as claimed by the plaintiff. The court below also held that the defendant being a statutory tenant, the plaintiff is entitled to protection of the property under the Rent Control Act and that the defendant can be evicted only by invoking the provisions of the said Act.

5. When the matter was taken up for final hearing, learned counsel appearing for the appellant invited out attention to the subsequent developments that had taken place during the pendency of the appeal. It is reported that the defendant/respondent had been working in the Providence Women's College, Kozhikode and that she was involved in a criminal case charged under Sections 468, 471 and 220 I.P.C. for fraud and fabrication of documents and for forging signatures and office seals of the Principal on several occasions. It is also reported that on the

basis of a complaint, the Kasaba Police, Kozhikode registered Crime No.371 of 2004 against the defendant under the above Sections and that she was placed under suspension from 13.12.2004. It is further reported that the defendant is not residing in the building in question for the past one year and that she failed to remit the electricity charges as a result of which disconnection notice was issued by the Electricity Board on 30.12.2005. The appellant/plaintiff also stated that he remitted an amount of Rs.1579/- to avoid disconnection. It is also reported that the Kerala Water Authority had issued a disconnection notice for payment of dues for water supply and that the total amount due as on 27.2.2006 is Rs.7347/- The appellant has filed two affidavits each in I.A. No.579 of 2006 and I.A. No.827 of 2006 stating the above facts. Photocopy of the letter from the Principal of the college informing about the suspension of the defendant, copy of the disconnection notice issued by the Kerala State Electricity Board, copy of the receipt of payment of the amount and copy of the bill served to the plaintiff after disconnection of water supply are produced along with the affidavits. Annexure V produced along with I.A. No.579 of 2006 is a letter sent to the plaintiff through the President, Girinagar Residents' Welfare Association, Calicut informing him that anti social activities were going on in the premises of the building in question at night. The above letter shows that the tenant of the house is not seen, that

recently the police raided the premises and a boy and a girl were taken for questioning. Learned counsel for the appellant submits that the respondent has abandoned the house. Learned counsel for the respondent also submits that he has no instruction from his client.

6. Taking note of the subsequent developments proved by the affidavits and the documents produced along with the Interlocutory Applications and having convinced that the defendant/respondent has abandoned the plaint schedule building, we are of the view that a decree for eviction will serve the ends of justice.

In the result, the decree and judgment in O.S. No.147 of 1998 are set aside. A decree is passed granting recovery of the plaint schedule property from the defendant. The appeal is allowed as above. There will be no order as to costs.

(KURIAN JOSEPH, JUDGE)

(HARUN-UL-RASHID, JUDGE)

sp/

KURIAN JOSEPH &
HAURN-UL-RASHID, JJ.

A..SNO.766 OF 1999

JUDGMENT

13TH DECEMBER, 2007